IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO: 1568 OF 2001 (M/S)
(Old No. 18805/98)

1- Onkar Singh
2- Gopal Singh, both S/o Sri Ganga Ram, R/o Village Noorpur, Tehsil Bazpur, District Udham Singh Nagar.

----------**Petitioners**

Versus

1- The Special Judge/Additional District Judge, Nainital.
2- The Prescribed Authority/Additional Sub Divisional officer, Kashipur, District Udham Singh Nagar.

----------Respondents

Sri Sarvesh Agarwal, learned counsel for the petitioners.
Learned Chief Standing Counsel for the respondents.

Dated: April 21, 2006.
HON'BLE RAJESH TANDON, J.

Heard Sri Sarvesh Agarwal, counsel for the petitioners and standing counsel for the respondents.

By the present writ petition the petitioners have prayed for a writ of certiorari quashing the order dated 23-08-1996 passed by Prescribed Authority as well as order dated 26-10-1993 and 25-03-1998 passed by the respondent no.1.

Briefly stated on 11-01-1984 Peshkar, Bazpur instituted the proceedings against the petitioners under Section 4(1) of ***U.P. Public Premises (Eviction of unauthorized occupants) Act, 1972*** and the same was registered as Eviction Suit No.22/25 of 1984-85 State of U.P. Vs. Onkar Singh and thereafter the Prescribed

Authority on 23.08.1986 issued notices to the petitioners under Section 4(1) of the Act stating therein that petitioners are unauthorized occupants over Khasra No. 51/15/2 measuring 35 begha in village Noorpur, Tehsil Bazpur and they were directed to show cause by 22-09-86 as to why they should not be evicted from the premises in dispute.

In compliance of the said order passed by the prescribed Authority, the petitioners submitted their reply to the aforesaid show cause notice on 22-09-86, stating therein that notice dated 23-08-86 is illegal. The premises in dispute is Dariyaburd and there remains water for 7-8 months and the said premises is situated near the bhumidhari land of the petitioners. It was further stated in the said reply that the disputed land does not come under the definition of public premises and, as such, the eviction proceeding cannot be initiated against the petitioners. The petitioners have also stated that they are in possession over the land in dispute for the last 20 years. On behalf of State it has been admitted that the petitioners are in possession over the disputed land since 1390 Fasli. The relevant averments are contained in paragraph 16 of the writ petition. The same is quoted below:

"That the petitioners are recorded in Khasra 1386-F to 1391-F under clause 4 and the U.P. Land Records Manual shows that this clause is meant to denote land held as an occupier without title when there is no one already recorded in clause 4 of the Khasra. Law relating to tenure namely that contained in U.P. Zamindari Abolition and Land Reforms Act makes ample provisions

for eviction against those who are alleged to have stepped in unauthorized occupation over such land."

After considering the entire evidence on record I find force in the contention of the petitioners. Therefore, the writ petition deserves to be allowed.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

21/04/2006
A.Roy